

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3145 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?
No.

EX MEMBER RASMI S SHAH C/O GUJARAT KAMDAR PANCHAYAT

Versus

VOLGA AIRTECHNIC LTD.

Appearance:

MR TR MISHRA for Petitioner
MR AK CLERK for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 13/07/98

ORAL JUDGEMENT

Rule. Mr. A.K.Clerk learned advocate waives service of notice of Rule on behalf of respondent no.1.

2. This petition is filed to challenge the order of dismissal of the application filed under section 15 of the Payment of Wages Act passed by the authority under the Payment of Wages Act on 12.9.1997.

3. I have heard both the sides. This petition is being disposed on a short point in view of proviso to section 17 of the Payment of Wages Act. Section 17 of the Payment of Wages Act makes a provision for an appeal against the order of dismissal of an application under section 15 of the Payment of Wages Act. Mr. Mishra learned advocate for the petitioner urged before me that only pure question of law is involved in this matter and therefore, this petition should be entertained and the petitioner should not be directed to go before the Authority under the Act. But I am unable to accept said submission of Mr. Mishra. When the order is being challenged before this Court under Articles 226/227 of the Constitution of India, the petitioner must exhaust all remedies including the remedy of appeal before coming to this Court. The submission of Mr. Mishra viz. that the matter involves only pure question of law could be open for him to be agitated before the Appellate Authority. The Appellate Authority is quite competent to decide not only question of facts but questions of law also. Therefore, in the circumstances the petitioner should first go before the Appellate Authority as provided by section 17 of the Payment of Wages Act. The time consumed from the date of filing this petition and till today should be exempted from the period for counting limitation in filing the said appeal. Therefore, the petition is hereby rejected only on that short point of non availing of the appeal remedy before coming to this court. The petitioner is directed to approach the Appellate Authority under the Payment of Wages Act and in case if unfortunately , he fails before the Appellate authority, then it will be open for him to come before this court by fresh petition. With these observations I hereby dismiss the petition. Rule discharged No order as to costs

(S.D.Pandit.J)